IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4647 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VISHWABHAR CHHOTKU YADAV

Versus

GHANSHYAM METAL ROLLING WORKS

Appearance:

1. Special Civil Application No. 4647 of 1993

MR TR MISHRA for Petitioner No. 1

MR KV GADHIA for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 03/09/2004

ORAL JUDGEMENT

Heard learned advocate Mr.U.T.Mishra on behalf of the petitioner and learned advocate Mr.Mahendra K. Patel

for Mr.K.V.Gadhia for respondent No.2.

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#. In the present petition, the petitioner workman has challenged the award passed by the labour court, Ahmedabad in Reference No.467 of 1986 dated 14th July, 1992 whereby the Reference has been rejected by the labour court. Affidavit-in-reply has been filed by the respondent No.1 along with the reply affidavit of the respondent and deposition of the workman was also produced on record.

#. Learned advocate Mr.Mishra submitted that the labour court has committed gross error in rejecting Reference. It was case of termination and not abandonment of job by the workman. He also submitted that the workman has not tendered any resignation to the respondent and therefore, not to allow to resume duties by the respondent, amounts to termination and this fact has not been properly appreciated by the labour court. Therefore, the award in question requires to be quashed and set aside.

#. Learned advocate Mr.Patel submitted that there was no cause for the company to terminate services of the workman and as such, there is no other reason for the company to terminated service inasmuch as the workman was working with the company from 1968. But on 14th May, 1984 when father of the petitioner had expired, the petitioner wanted to go his native place and he went. Thereafter, when he returned to Ahmedabad, no message has been given by the workman. However, since the company was not having address of the workman or his native place, could not establish communication and therefore, there was no termination by the company but the workman has left the job at his own after returning from native place. Even for period in between during pendency of Reference, he was allowed to work but thereafter also, he left job and insisted for daily wage at the rate of Rs.35/-. It has come on record that the workman concerned was gainfully employed for the period in between. Mr.Patel has also submitted that in the year 1990, the petitioner workman was aged about 53 years as per his own deposition before the labour court. Therefore, now he must have attained the age of superannuation. Learned advocate Mr.Patel has supported the order passed by the labour court and submitted that these are appreciation of facts and fact finding arrived at by the labour court and therefore, this Court may not interfere with the same while exercising the powers under Article 227 of the Constitution of India.

#. I have considered submissions of the learned advocates for the parties and also perused the order passed by the labour court. This Court has also gone through the affidavit in reply filed by the respondent and the deposition of the workman. The workman concerned in his evidence has clearly admitted that on 14th May, 1985 his father expired and therefore, he left Ahmedabad and went to his native place. He has not tendered resignation but not submitted any leave report. He also admitted that every year, he used to visit his native for two to three months but on some occasion, he avoided to visit. During pendency of reference, offer was made by the respondent to the workman to resume on duty but after some period from 4th January, 1990 to 13th March, 1990, as per his admission, he himself has stopped attending the work and he was insisted for daily wage at the rate of Rs.35/-. He also admitted that while working with M/s Satyanarayan Metal Works, he was receiving Rs.35/- per day as daily wage. Therefore, these are oral evidence of the workman appreciated by the labour court and ultimately, the labour court has come to the conclusion that there was no termination by the respondent company but the workman had left the job for visiting his native on account of death of his father. Therefoer, according to my opinion, this being appreciation of evidence by the labour court based on fact finding arrived at by the labour court, this Court cannot reappreciate and cannot act an appellate authority while exercising the powers under Article 227 of the Constitution of India.

#. Therefore, taking into consideration the facts and circumstances in its totality emerged from the award impugned in the present petition, according to my opinion, the labour court has not committed any error which requires any interference by this Court while exercising the powers under Article 227 of the Constitution of India. As such, there is no substance in the present petition and the same deserves to be rejected and same is rejected accordingly.

Rule is discharged with no order as to costs.

Date : 3.9.2004 [H.K.Rathod, J.]

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